purports to be a copy. In his view that document was what it purported to be, namely, a certified copy of the notes of evidence taken by the Magistrate, Inche Abdul Rani, in the preliminary enquiry of the 8th and 16th March, 1955.

In the above mentioned case, Spenser Wilkinson J. said: "I think the words of section 76 of the Evidence Ordinance are too clear to admit of any gloss upon them. The section says "such certificate shall be dated and subscribed by such officer with his name and official title...." The requirement that the certificate shall be dated has as much force as the requirement that it shall be subscribed. If, therefore, the certificate is not dated then the copy is not a certified copy." That part of the judgment is not an *obiter dictum*. The point was raised in the Court below and was argued on appeal; and the learned Judge considered that there was a ground on which the accused in that case were entitled to be acquitted. I am in full agreement with the opinion of Spenser Wilkinson J. on section 76. The date is an essential requirement of the certificate and there are obvious reasons why this is so as is apparent from other provisions of the Evidence Ordinance. Apart from the words used in section 76, which as stated above are "too clear to admit of any gloss upon them", a certified copy raises certain presumptions under section 79; under sub-section (1) of this section the Court shall presume certified copies to be genuine if the document is substantially in the form and purports to be executed in the manner directed by law in that behalf and under sub-section (2) the Court shall presume that any officer by whom such document purports to be certified held, *when he signed it*, the official character which he claims in such document. It is obvious, therefore, that the date is essential for the purpose of establishing whether on a particular date the officer held the official character which he claims.

I held, therefore, that Ex. P2 was not admissible in evidence and in default of any evidence as to what the appellant had said at the preliminary enquiry he should have been acquitted and I allowed the appeal and quashed the conviction.

It may be convenient if I add here the following observations on certified copies. It has been the practice, for the purpose of proving what a witness has said in a judicial proceeding, to produce certified copies of the depositions. Such certified copies are no doubt admissible in evidence, under section 76 of the Evidence Ordinance, 1950, if executed in the manner directed by that section. Such practice was necessary until the amendment of section 176 of the Criminal Procedure Code under which in proceedings of summary trials in the subordinate Courts, the Court was required to keep a record of the particulars of each case in the Charge Book and in the Magistrate's Note Book. Under that section, as amended by the 1953 Subordinate Courts (Forms of Proceedings) Rule No. 1 (L.N. 239/53), the particulars of each case are now included in a separate record. That being so there is now no reason why the original record should not be produced in evidence and the provisions of section 80 of the Evidence Ordinance will apply.

Another point I would like to mention is with regard to the officer certifying that a copy is a true copy of the record. The mode of taking and recording evidence in the subordinate Courts is prescribed by statute, i.e., section 176 of the Criminal Procedure Code; the evidence recorded by a President of a Sessions Court or a Magistrate are not private notes as the notes taken by a Judge in the High Court, and, subject to the provisions of section 433 of the Criminal Procedure Code, such records are public documents within the meaning of section 74 of the Evidence Ordinance, 1950. That being so, the officer who is responsible for the safe-keeping of such documents and who has the custody thereof is the Registrar or other officer performing the duties of Registrar, (and exceptionally in some Courts a Magistrate performs the duties also of Registrar) and in my opinion, therefore, the certificate should be subscribed and dated by the Registrar or such officer.

Appeal allowed.

MOHAMED ALI v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) March 15, 1956]

[K. L. — Criminal Appeal No. 7 of 1956]

Criminal trial — Sentence of whipping — Punishment of whipping should be reserved for crimes of violence.

It is true that s. 380 of the Penal Code permits the passing of sentence of whipping, but it is not the policy of the Courts to impose sentences of whipping unless the offence has been committed with substantial violence.

[**Editorial Note:** In **Endut bin Bakar Kuala Trengganu** — Criminal Appeal No. 36 of 1955 Mathew C.J. gave a similar ruling. In Singapore the sentence of whipping under s. 380 of the Penal Code has been abolished by the Criminal Justice (Punishment-Amendment) Ordinance, 1954.]

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

J. G. Adams (Federal Counsel) for the respondent.

Buhagiar J. : — This was an appeal against sentence on a charge of theft in a dwelling house of 200 cigarettes, an offence punishable under section 380 of the Penal Code. On conviction the learned

Magistrate sentenced the appellant to one year imprisonment and 6 strokes of the rottan, such sentence to be followed by Police supervision for a period of one year under section 295(i)(b) of the Criminal Procedure Code. The appellant was also ordered to make restitution.

The appellant had six previous convictions, two of which were for theft under section 380 and 379 of the Penal Code committed in 1930 and in 1953, respectively; in view of these previous convictions the learned Magistrate thought it fit to inflict whipping. There is no question that the sentence of whipping was legal and although on appeal the Court is reluctant to interfere with the discretion of the Court below in inflicting a sentence which is in accordance with the law, in this case I considered that except in very bad cases, the punishment of whipping should be reserved for crimes of violence.

I, therefore, altered the order of the learned Magistrate and set aside the sentence as regards whipping.

Order accordingly.

REG. v. NG HEE WENG & ORS.

[C. A. (Hill, Buhagiar and Good JJ.) April 6, 1956]

[K. L. — F. M. Criminal Reference No. 1 of 1956]

Customs Ordinance, 1952, s. 123 — Whether this gives discretion to Court to order forfeiture or release of vehicle used in commission of offence.

Where a vehicle used in the commission of an offence had been seized by a customs officer under s. 110 of the Customs Ordinance, 1952, and if it is proved to the satisfaction of the Court that the vehicle had been so used, s. 123 of the said Ordinance gave no discretion to the Court, but render an order for forfeiture mandatory.

[**Editorial Note:** In **Re Ng Ham**[1] prohibited goods were attempted to be exported in a Kotak. The Magistrate ordered forfeiture of the prohibited goods but not the Kotak itself. In his grounds of decision in that case Wilson J. said: "Kotak S. 10, No. 1083 was a vessel liable to seizure by any officer of Customs under s. 110 of Ordinance No. 142 of 1952. Section 122 of the same Ordinance provides that all goods liable to seizure under the provisions of this Ordinance shall be liable to forfeiture. Section 123 of the Ordinance provides that if it is proved to the satisfaction of the Court that an offence against this Ordinance has been committed, an order for the forfeiture of goods liable to forfeiture shall be made if the goods were used in commission of the offence.

The learned Magistrate, having convicted the accused of the offence set out above, ought to have ordered the forfeiture of the boat and there was no alternative under the law. . . . . It is immaterial that the boat did not belong to the convicted person."].

Cases referred to:—

(1) *Re Ng Ham* K.L. — Criminal Revision No. 30 of 1954 — unreported.

(2) *Goh Tong v. Public Prosecutor* (1953) M.L.J. 251.

CRIMINAL REFERENCE to the Court of Appeal.

D. C. Jackson (Ag. Solicitor-General) for the appellant.

D. G. Ironside assigned to argue the Reference.

Good J. (delivering the judgment of the Court): — The question, which comes before us by way of reference under section 34(1) of the Courts Ordinance, 1948, is whether section 123 of the Customs Ordinance, 1952 gives a discretion to the Court to order the forfeiture or the release of a vehicle used in the commission of an offence against the Ordinance which has been seized by an officer of customs under section 110 of the Ordinance, or whether forfeiture is mandatory if it is proved to the satisfaction of the Court that the vehicle was so used.

In this case, uncustomed goods were found in a motor car which had been taken across by the ferry from Penang to Province Wellesley, and one of the passengers in the car pleaded guilty to, and was convicted of, an offence under section 131(1)(e) of the Ordinance. The motor car used in the commission of the offence was a hired car. The learned President of the Sessions Court, Butterworth, who tried the case, found that neither the owner nor the driver of the car had any knowledge of the commission of the offence by the passenger; and on application being made by the prosecution for the forfeiture of the car, he held that forfeiture was a matter of discretion and refused the application.

The Crown appealed against the decision of the learned President. The learned Judge who heard the appeal, feeling himself bound by the unreported decision of Wilson J. in Criminal Revision No. 30 of 1954, *Re Ng Ham*[1], allowed the appeal; but for reasons set out in the reference before us, the learned Judge doubted the correctness of the decision in that case, and consequently took the step, approved in *Goh Tong v. Public Prosecutor*[2] of referring the matter to this Court for decision.

We have given careful consideration to the very full reasons given by the learned Judge and by the learned President for the view that the forfeiture of a conveyance used in the commission of a customs offence is discretionary, and to the arguments which Counsel assigned to argue the point on behalf of the owner of the motor car put forward in support of that view, but we have come to a different conclusion.

The question is whether "goods", in the expression "an order for the forfeiture of goods" which appears in section 123, includes a conveyance used for the